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COMMONWEALTH OF MASSACHUSETTS

SJC- 2435

MIDDLESEX, SS:

SUPERIOR COURT
CR. 79-1383

1-176

COMMONWEALTH

VS

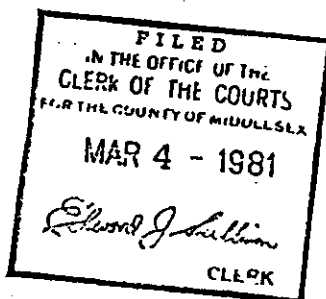
WILLIAM TYREE, JR.

Before: YOUNG, J
and Jury

APPEARANCES:

Lawrence McCormick, Esq., Assistant District
Attorney, Cambridge, Massachusetts, for the Commonwealth

Bernard Bradley, Esq., Massachusetts Defenders
Committee, 189 Cambridge Street, Cambridge, Massachusetts,
for the Defendant.



Superior Court
Cambridge, Massachusetts
Friday, February 8, 1980

1 cannot do it. They are using every means at their
2 disposal. There are certain limitations. I think the
3 defendant is entitled to certain limitations. They should
4 be bound to give him a fair trial. Now they say he
5 should come into court and testify.

6 MR. McCORMICK. If your Honor please, I don't agree
7 with Mr. Bradley's response.

8 THE COURT. Your positions are noted for the record.
9 So long as we do not delay the trial in any way.

10 MR. BRADLEY. I object to the filing at this time.

11 THE COURT. Very well, your objection is noted.

12 Let's begin.

13
14
15 THE CLERK. Are you Corrine Lauziere?

16 THE JUROR. Yes.

17 (Juror sworn by the clerk)

18 THE COURT. Miss Lauziere, good morning.

19 What we do now is ask you some additional questions
20 to see that it is appropriate that you sit as a juror
21 in this case.

22 Maybe you could tell us just a little bit about
23 your work?

24 THE JUROR. I work at Northeastern Distributors.
25 I do clerical work.

MIDDLESEX, SS:

SUPERIOR COURT

No. 79-1383-1384 COMMONWEALTH versus WILLIAM TYREE, JR.

No. 79-1385-1386 COMMONWEALTH versus ERIK AARHUS

Before: YOUNG, J
w/o Jury

THIRD DAY
MOTION TO RECONSIDER

APPEARANCES:

Lawrence McCormick, Esq., Assistant District
Attorney, Cambridge, Massachusetts, for the Commonwealth.

William Bradley, Esq., Massachusetts Defenders
Committee, Cambridge, Massachusetts, for Defendant Tyree.

William Kittredge, Esq., 34 Pope Street, Hudson,
Massachusetts, for Defendant Aarhus.

Superior Court
Cambridge, Massachusetts
Monday, January 21, 1980

1 Q All right.

2 Mr. Keene, did you in the course of this investigation
3 have an opportunity to talk with a Mr. Williams?

4 A Yes, sir, I did.

5 Q Will you tell us his name, sir?

6 A His name is Vais Williams, to the best of my recollection,
7 sir.

8 Q Can you tell us when you had the opportunity to talk
9 with him, Mr. Keene?

10 A It was some time prior to the 13th and after the 31st.
11 I couldn't give you a day or a date without seeing my
12 notes.

13 Q Can you tell us your purpose in talking to Mr. Williams?

14 A Yes, sir.

15 Q Please.

16 A At that time I believe I was with a couple of other
17 officers and we were just conducting door-to-door search,
18 if anybody had seen anything in the area. And Mr. Williams
19 lived in an apartment complex next to the scene of the
20 crime. And just in the course of our investigation to
21 talk to everybody that lived in the area and that is how
22 we came upon Mr. Williams.

23 Q Did Mr. Williams, just yes or no, if you know, did
24 Mr. Williams make an ID of an individual being in that
25 vicinity on the day of the crime?

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS
NO. 79-1385 - 1386

SUPERIOR COURT

COMMONWEALTH

VS

ERIK AARHUS

MOTION TO SUPPRESS

BEFORE: MORSE, J.

APPEARANCES:

Lawrence McCormack, Assistant District Attorney,
representing the Commonwealth

Joseph Spadafora, Esq.,
representing the Defendant

December 7, 1979
Cambridge, Massachusetts

Alice C. McDonald
Official Court Reporter
Middlesex Superior Court
Cambridge, Massachusetts 02141

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1 page 28 it says: Let me tell you something. We
2 haven't told anybody but we have got a witness. The
3 defendant asked who is it. This is going to be our
4 ace in the hole.

5 And he identifies what the witness is going to
6 testify to, that the witness would identify him by
7 clothing.

8 Shortly after that Aarhus admits the offense.

9 Does the Commonwealth indeed have a witness that
10 is referred to in that question?

11 MR. MC CORMACK: The Commonwealth had a witness.

12 THE COURT: Who was that?

13 MR. MC CORMACK: - which was an individual in the
14 adjoining apartment building at 104-1/2 Washington
15 Street. There is an area where one goes into a driv-
16 way, and it opens to sort of a rectangular area inside
17 and there is an apartment. As you are looking in the
18 driveway there is an apartment building over to your
19 right, and there is one almost as you go straight in
20 There was a witness, an individual by the name of B.
21 Williams who was on one of the upper floors in the
22 apartment building as you go directly in, who observe
23 someone running from the back of the building.

24 THE COURT: That witness whose statement you ha

11-18

1 but it's somewhere, from the police officer who took
 2 it from Mr. Williams, who shortly thereafter dis-
 3 appeared. I might suggest to the Court that in no
 4 way whatsoever would it even remotely relate to Mr.
 5 Aarhus' stature or build or what he told the police
 6 what he was wearing.

7 THE COURT: That wasn't the issue I was asking the
 8 District Attorney about.

9 MR. SPADAFORA: Well, in any case, your Honor, as
 10 far as I'm concerned it was a witness that would have
 11 been brought by the defense, not by the Commonwealth.

12 THE COURT: Well, the statement in the record is
 13 by the questioner: ~~Somebody has got a witness, and~~
 14 ~~whether the witness is persuasive or not,~~
 15 ~~I think that's the true statement and that they have a~~
 16 ~~witness.~~

17 MR. MC CORNACK: ~~There is no question, if your~~
 18 ~~Honor please, they did have a witness, Mr. Williams.~~

19 THE COURT: What happened to Williams?

20 MR. MC CORNACK: I think what happened, if your
 21 Honor please, ~~is that after Mr. Aarhus gave that~~
 22 ~~statement, they just stopped and they didn't carry~~
 23 ~~that through any further. I think there may have been~~
 24

II-

heavily on a Judge.

Later on, at the bottom of page 27: There is a big blank difference between charge of murder and being charged with being accessory after the fact. Okay, if you did it, you're it. Case closed. There is more than one person involved here.

MR. SPADAFORA: Your Honor, if it would help, on the bottom of page 28 is a description of what the police said the witness would have said.

~~In this Honor, I would like to see your testimony~~
~~that the police said the witness would have said~~
~~that the police said the witness would have said~~
~~that the police said the witness would have said~~
~~that the police said the witness would have said~~
~~that the police said the witness would have said~~

THE COURT: Do you know the source of that statement about the idea of breakdown, or jean jacket or life jacket?

MR. MC CORMACK: I think what the problem is that the transcription is certainly not the greatest. I have to listen to the tape at this particular point to determine who is making that statement.

MR. SPADAFORA: Your Honor, if I may suggest to the Court, I believe that particular question, whatever it is, the statement, is made by Chief Adamson and it certainly couldn't pertain to the potential witness.

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION Fort Devens, Massachusetts	DATE 30 Nov 78	TIME 0945	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME AARHUS Erik Y.	SOCIAL SECURITY NUMBER 184-48-7933		GRADE/STATUS SP4 E4
ORGANIZATION OR ADDRESS Service Company, 10th Special Forces Group (Abn), 1st Special Forces, Fort Devens, M			

I, SP4 E4 ERIK Y. AARHUS

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH

Q. Are you aware that you are here at the JAG Office this morning to answer certain questions concerning your knowledge about a larceny that occurred in your company home-time back in June of 1978?

A. Right.

Q. Are you making this statement of your own free will to me, CPT David P. Carey?

A. Yes.

Q. Did you make a statement to MPI Mackles regarding this larceny on 23 June 1978 at approximately 1315 hours?

A. Yes.

Q. Do you recall the contents of that statement?

A. Yes, I was saying that at the time he sold me a determined length of rope for \$15.

Q. In this statement, did you admit that you purchased this rope from a SP4 Tyree?

A. Yes, I did.

Q. Did you state that you purchased this rope from Tyree on Tuesday, 20 June 1978?

A. Yes.

Q. Did you further say that you picked up the rope close to Tyree's desk in the ^{CVA} #2 building? ^{VFST}

A. Yes.

Q. Did you state that you and Tyree were both on duty at the time?

A. Both on duty at the time.

Q. Did you state that Tyree sold you about 120 feet of rope?

A. Yes.

Q. Did you further state that you did not realize this was government property at first and that it was only after talking with 1SG Mathews on Thursday, 22 June 1978, that you realized it was government property?

A. Yes.

Q. Do you wish to in anyway change the statement you made on 23 June 1978?

Q. Yes.

(CONTINUED ON REVERSE SIDE)

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>EYA</i>	PAGE 1 OF 4 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ___ TAKEN AT ___ DATED ___ CONTINUED" THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE ___ OF ___ PAGES" WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

STATEMENT (Continued)

Q. Would you relate what happened on 20 June 1978?

A. On 20 June 1978, I was at PFST 2 and I hand-receipted the rope from Specialist Tyree for rappelling that weekend.

Q. Did Tyree offer to sell you this rope?

A. No.

Q. To your knowledge, was Tyree acting within his duty standards in issuing you the rope?

A. Yes. Like I told you before, you know, it's supposed to be issued for reasons like duty but it's always done; receipting rope for weekends and personal use; and then it's returned after it's been used. It's all O.K..

Q. When you hand-receipted this rope, did you intend to return it to PFST 2?

A. Yes.

Q. Do you have possession of the hand receipt that you used to obtain the rope?

Q. When did you decide not to return it to PFST 2? A. No, I don't hang on to things like that.

A. I didn't decide not to return it.

Q. When had you intended to return the rope?

A. The following Monday - whatever day that was.

Q. What happened in the interim to change your mind and turn the rope in to 1SG Mathews?

A. After I was done talking to Peterson.

Q. What happened when you talked to Peterson?

A. I guess Peterson has something against Tyree, but I for sure didn't. Peterson offered me \$20 to make a statement against Tyree to say he sold me the rope - but I, myself, had a personal grudge against Tyree at that time.

Q. What was that grudge for?

(CONTINUED ON CONTINUATION SHEET)

AFFIDAVIT

I, SP4 E4 ERIK Y. AARHUS

HAVE READ OR HAVE HAD READ TO ME THIS STATE-

MENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 4. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

Erik Y. Aarhus
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 30 day of November, 1978

at Fort Devens, MA

David P. Carey
(Signature of Person Administering Oath)

DAVID P. CAREY, CPT, JAGC

(Typed Name of Person Administering Oath)

Article 136a(1), UCMJ

(Authority To Administer Oaths)

PAGE OF PAGES

PAGE 3 of 4 PAGES

30 November 1978
EJA

CONTINUATION SHEET - DA FORM 2823

STATEMENT OF SP4 E4 ERIK Y. AARHUS (Contd):

A. ~~I had asked Tyree - had made arrangements to go to Nashua to pick up my motorcycle on Wednesday afternoon. So I made all my plans around that date and he never showed or never said he wasn't going to do it. So I just waited. So I considered it a very personal insult and so I thought that there'll be a day to pay back.~~

Q. Did you accept the \$20?

A. Yes.

Q. And after accepting the \$20, did you make a statement against Tyree?

A. Yes, I did.

Q. Do you realize that the statement that you are now making is contrary to the statement you made on 23 June 1978?

A. Yes.

Q. Have you bought anything from Tyree?

A. No, I haven't.

Q. Do you have knowledge of any other criminal activity which Tyree may be involved in?

A. No, I don't. I'm not nosey.

Q. Why are you now making this contrary statement?

A. Because the other one is false and because of conscience.

Q. How come your conscience didn't bother you earlier?

A. It did, after I heard a rundown of what is going on; I wanted to get him back - revenge, but I didn't want to send him to jail.

Q. Are there any other reasons why you're making this statement today?

A. No.

Q. Has anyone promised you anything to make this statement?

A. No.

Q. Has anyone threatened you with anything to make this statement?

A. No.

Q. Have you been coerced by any means or by anyone to make this statement?

A. No.

PAGE 3 of 4 PAGES
EJA

(84)

PAGE 4 of 4 PAGES

30 November 1978

CONTINUATION SHEET - DA FORM 2823

EYH

STATEMENT OF SP4 E4 ERIK Y. AARHUS (Contd):

Q. Do you have any knowledge of any other wrongdoings in Service Company?

A. No.

Q. Is there anything you would like to add or delete from this statement - any other comments you would like to make?

A. I can't think of anything right offhand.

Q. What is your current address?

A. Service Company.

Q. Are you in the barracks?

A. I moved back on base - because it is too expensive. *EYH*

/ / / / / / / END OF STATEMENT / / / / / / /

'He Didn't Commit Suicide'

Investigations: Anguished relatives insist the U.S. military bungled probes and covered up murders

HE WAS A FIGHTER JOCK, A DECORATED veteran of 221 combat missions over Vietnam and third in command at the El Toro Marine Corps Air Station in El Toro, Calif. But on Jan. 22, 1991, Col. James Sabow, 51, was found shot dead in the backyard of his home, the victim of a blast to the head from his own shotgun. Sabow had been watching television coverage of the Persian Gulf War when his wife, Sally, left the house at 8:30 a.m. As she walked out the door she heard him answer the phone and repeat his name as though there were no response. When she returned an hour later, he was dead. The U.S. Marine Corps and the Naval Investigative Service concluded Sabow had committed suicide. His brother, Dr. John David Sabow, says the colonel was murdered because "he knew too much" about illegal covert operations at the base.

The body of marine Second Lt. Kirk Vanderbur was found at a private shooting range in Hubert, N.C., in February 1992. He had been shot twice—once in the abdomen by a shotgun loaded with birdshot, then in the head with a .223-caliber Ruger rifle. Despite the fact that the guns lay eight to 10 feet apart, the Naval Investigative Service concluded Vanderbur had committed suicide—which meant he must have crawled over to the Ruger rifle while badly wounded in a second attempt to take his own life. Vanderbur's mother, Lois, says there was no sign her son was despondent and that he sent a cheery letter to his younger brother—"little squirrely bro"—the day before his death. "We don't know what happened, but we know he didn't commit suicide," she says.

These cases and dozens of others raise troubling questions about life—and death—in the military. According to *The Philadelphia Inquirer*, which printed a lengthy series on the controversy last year, 3,375 members of the U.S. armed services were listed as suicides between 1979 and 1993—and of those, grieving relatives have challenged the military's official findings in more than

60 cases. The families charge that military investigators have often lost or mishandled crucial evidence or failed to perform autopsies and laboratory tests. In some cases, they contend, investigators have attempted to cover up scandals or criminal conspiracies in the ranks. The relatives have formed a national organization called *Until We Have Answers* to protest what they see as the Penta-



Minefields: Vanderbur with her son's photo, Sabow

gon's slipshod handling of suicide cases, and some have gone to extraordinary lengths to dispute the military's claims. The parents of marine Cpl. John MacCaskill Jr., an embassy guard found shot in a bar in El Salvador in 1988, have had his body exhumed twice in an attempt to prove he was murdered. "These families are not off the wall," says Frederick McDaniel, a former army lieutenant colonel who once commanded a criminal-investigations unit. "They've been treated very shabbily. The bottom line is, nobody gives a damn."

Sabow's immediate family filed suit against the navy and the Marine Corps,

seeking damages for the intentional infliction of emotional distress and conspiracy to cover up his murder. The Sabows contend navy investigators ignored physical evidence that proves murder, including the fact that Sabow's fingerprints were not found on the shotgun or on the two shells in its firing chamber. Gene Wheaton, a former military investigator retained by the Sabow family, says the navy's criminal-investigation service is notably less competent than those of the other armed services. "They don't think like cops—they think like bureaucrats," he says. "They want to go in and close the whole thing out." Wheaton also claims the marine brass is concealing a pattern of covert arms smuggling that is "a continuation of Iran-contra"—and he implies that Sabow must have known something illegal was going on.

Golf junkies: But Sabow may well have had a motive for suicide. According to his brother, the colonel was removed from his post as assistant chief of staff at El Toro about five days before his death and was under investigation for the unauthorized use of marine aircraft. The purpose, reportedly, was golf junkets, not international arms smuggling. (The Marine Corps refused to comment on all aspects of the Sabow case.) J. D. Sabow says these charges were "phony and trumped up" and insists his brother "was going to blow everything out at a court-martial." Even so, Sabow faced the likelihood of an inglorious finale to a distinguished military career—and his brother, who alleges that marine officials conspired to wreck his own career as a neurologist, is clearly bent on avenging a family tragedy.

There may be a plausible explanation for Kirk Vanderbur's apparent suicide as well. David Grimes, a private investigator hired by the family, believes Vanderbur accidentally discharged the shotgun, opening a gaping wound in his stomach—and then, in excruciating pain, struggled to the Ruger rifle to kill himself. Why? As Grimes explains it, Vanderbur knew that he was slowly bleeding to death and that there was no one around to help him; the shooting range had closed for the weekend. "I can see putting an end to it," Grimes says. But, he says, Lois Vanderbur "didn't like the fact that I didn't find it was murder."

Under pressure from the families and from Congress, Pentagon officials are reviewing about a dozen suicide cases that still seem questionable. But the public's skepticism about the integrity and competence of military officialdom probably means that such investigations will always be emotional minefields—and a source of anguished controversy for years to come.

NINA ARCHER BIDDLE in Chicago